

Case Study - return of sales deposit

Relevant Facts

The Complainant signed a conditional contract (21-day finance clause) to purchase a property (the Property) on 8 November and paid a deposit.

Another offer was made on the Property and the contract was dated 11 December. The contract contained a non-completion clause and the contract was unable to be completed unless the Complainant's contract came to an end.

The other offer on the Property was accepted and became unconditional on 14 December.

The Complainant claimed that she received no formal notification that another offer had been made on the Property.

The Complainant was notified by her solicitor at 5.30pm on 16 December 2019 that the finance clause had expired.

The Complainant's deposit was not returned until 20 December 2019 despite earlier requests made.

Ground of complaint

The ground of complaint was that the Property Agent failed to properly deal with funds by failing to return the Complainant's deposit in a reasonable time after the contract came to an end.

Discussion

Pursuant to legislative requirements the Real Estate Agency was required to retain the deposit in its trust account until it received confirmation that the Complainant was "*the person entitled to it*", which the Board was satisfied occurred on 17 December 2019.

Evidence showed that the Real Estate Agency received formal notification from the Complainant's conveyancer at 5.42pm on 16 December 2019 that the contract was at an end and similar confirmation from the vendor's conveyancer on 17 December 2019.

Further, an email was forwarded by the Complainant in the evening of 17 December 2019 requesting the return of the deposit.

As the deposit had not been received by 19 December 2019, the Complainant lodged the complaint with the Board by email and cc'd the Real Estate Agency.

The Board noted the Property Agent provided evidence that the employee responsible for handling trust money was not at work at the time, due to a family emergency interstate but upon being cc'd into the Complaint form lodged, another employee refunded the deposit the following day that being 20 December 2019.

The Board considered that a three-day delay to refund the deposit is not considered to be good business practice on the part of the Real Estate Agency, however it was not behavior that was sufficiently serious to have reached the threshold of amounting to misconduct requiring further action.

The Board also considered that a real estate agency should not place reliance on one staff member to initiate payment from the trust account. While payment of trust money by electronic funds transfer (EFT) must be authorised by the property agent in charge of the business (or a person acting for or on behalf of the property agent in charge of the business and with the approval of the property agent in charge) there should be more than one person within the business who has the ability to process the transaction so as to avoid unnecessary delays.

Finding by the Board

The Board having considered the information provided to it determined to dismiss the complaint pursuant to Section 92 of the *Property Agents and Land Transactions Act 2016* as lacking in substance.